



538887

Holme Roberts & Owen LLP

Post-It Fax Note 7671		Date 4/18	# of pages 3
To [Redacted]	From Erica Lee		
Cn./Dept. EIA	Co. Lee		
Phone #	Phone # 406/443-4920		
Fax # 303/312-6071	Fax #		

April 18, 2000

VIA FACSIMILE AND U.S. MAIL

Matthew Cohn  
Legal Enforcement Program  
United States Environmental Protection Agency  
990 18<sup>th</sup> Street, Suite 500  
Denver, CO 80202-2466

Re: Desire to Proceed Under Unilateral  
Administrative Order, Libby Asbestos Site

Dear Mr. Cohn:

As stated to you on numerous occasions, Grace takes its responsibility in Libby, Montana seriously. For that reason, we have provided among other things, funds to assist St. John's Hospital, and a medical plan for our employees, their dependants and anyone else in Libby who is suffering from an asbestos-related disease. We are pleased to offer EPA a plan to begin remediation that builds off the work we have both done over the past five months.

As we discussed at our meeting in Denver on April 10, 2000, Grace has been reviewing the draft Administrative Order on Consent (AOC), dated February 25, 2000, as well as the attached work plan. After careful consideration, Grace has determined that we would prefer to proceed with the work outlined in our April 5, 2000 work plan (with the modification described below) under the terms of a Unilateral Administrative Order (UAO), rather than the terms of the AOC. This approach allows both Grace and EPA to eliminate further negotiation regarding the legal terms within which the work would be carried out, and make appropriate cleanup at the site our first and only priority.

Our decision to proceed with the work under a UAO is based on several considerations. As we have discussed on many occasions, Grace has had difficulty determining which sampling and analytical methodology EPA has been following at Libby. In the Sampling and Quality Assurance Project Plan, dated December 7, 1999, EPA proposed application of PLM and TEM methods, which are standard methods for asbestos testing throughout the country and are widely used by EPA. In Revision 1 to the Sampling and Quality Assurance Project Plan, dated January 4, 2000, EPA decided to apply ISO Method 10312, with reference

Kenneth H. Lind  
(303) 566-0609  
kenneth@hro.com

Attorneys at Law  
1700 Lincoln Street  
Suite 4100  
Denver, Colorado  
80202-4541  
Tel (303) 861-7000  
Fax (303) 866-0200  
www.hro.com

Denver  
Salt Lake City  
Boulder  
Colorado Springs  
London

**Holme Roberts & Owen LLP**

April 18, 2000

Page 2

only to the Berman and Crump study and no stated rationale. We discussed the use of ISO Method 10312 during our February 3 meeting in Libby and were promised a written explanation regarding the rationale for use of this method. None was received until the April 4, 2000 letter from Christopher Weis. By its own terms, Mr. Weis' letter was "background information" regarding the use of ISO Method 10312, rather than a rationale for employing this method.

In our March 20 and April 10 meetings, EPA openly discussed its struggle to identify an appropriate analytical methodology and conceded it had not yet accepted a particular approach. In the March testimony before Senator Baucus, EPA officials admitted to "developing science [specifically the sampling and analytical methodology] as we go." Last week, Grace learned of an Interagency Asbestos meeting (which includes EPA Region 8), scheduled for April 25 to 27, 2000, which is intended to make decisions on issues including:

- (1) Determination of an interim approach to asbestos risk assessments at Libby, Montana;
- (2) Analytical data required to support the chosen risk assessment method; and
- (3) Appropriate sampling and analytical methods to support risk assessments at sites such as Libby, Montana.

With such critical decisions yet to be made, the presence of an imminent and substantial endangerment in Libby has not been established. This is particularly true in light of EPA's recent comments which indicate that no exposure pathway has been identified for Libby residents. Under the circumstances, Grace cannot commit to signing an order which forces us to give up all past and future rights.

Particular provisions of the AOC are also problematic. Paragraph 82 of the AOC requires Grace to conduct "any additional removal actions" not already included in the approved plan which "are necessary to protect public health, welfare, or the environment." The addition of a new Paragraph 42 provided at the April 10th meeting, goes so far as to include a waiver of "evidentiary objections in the data gathered, generated, or evaluated by EPA, the state, or Respondents in the performance or oversight of the work that has been verified according to EPA-

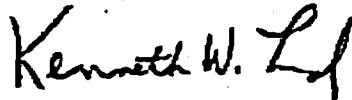
**Holme Roberts & Owen LLP****April 18, 2000****Page 3**

approved quality assurance/quality control procedures." Paragraph 49 requires Grace to pay all EPA's past costs without review and effectively waive any viable basis for challenging all future costs. With EPA's analytical and risk assessment methodologies still being developed, and the inescapable doubt regarding the presence of an ongoing actual health risk in Libby, such provisions are unacceptably broad and require Grace to agree to an undefinable scope of work at the site.

Despite the concerns outlined above, Grace wants to proceed expeditiously with the cleanup in a manner consistent with its April 5 work plan. During our April 10 meeting, EPA indicated certain modifications might be necessary in order to finalize the work plan as submitted. In particular, we discussed the scope of the remediation area on the Parker property, as well as adopting an incremental approach to soil removal and testing to include removal and confirmation sampling on six inch intervals down to depth no more than two feet. In order to address these issues, which we expect can be completed quickly, we propose a meeting in Libby on April 20 to finalize the work plan. Grace's remediation contractor, as well as Grace's legal representatives, have already made arrangements to be in Libby on this date and we can start the remediation immediately.

Please call me to discuss the logistics for issuance of the UAO. Also, let me know as soon as possible regarding the EPA's willingness to meet in Libby.

Very truly yours,



Kenneth W. Lund

KWL:cg